HM Treasury Consultation:

Civil Liability Act report on savings provision: consultation on implementing regulations

Response from the Motor Accident Solicitors Society

May 2019

This response is prepared on behalf of the Motor Accident Solicitors Society (MASS) and submitted by the Chairman, Paul Nicholls.

MASS is a Society of solicitors acting for the victims of motor accidents, including those involving personal injury (PI) MASS has over 100 solicitor firm Members, representing approximately 2000 claims handlers. We estimate that member firms conduct in the region of 400,000 PI motor accident claims annually on behalf of the victims of those accidents. The Society's membership is spread throughout the United Kingdom.

The objective of the Society is to promote the best interests of the motor accident victim. This is central, and core to our activity. We seek to promote only those policy and other objectives which are consistent with the best interests of the accident victim. We seek to set aside any self interest in promoting these arguments, recognising that we are in a position of trust, and best placed to observe the best interests of motor accident PI victims first hand. We are a not for profit organisation, which requires specialism in motor accident claimant work as a pre-requisite for membership. We also have a Code of Conduct which member firms are required to abide by, which is directed to the best interests of the motor accident victim.

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1. Broad observations

MASS welcomed the Government's amendment to the Civil Liability Act 2018 introducing a statutory requirement on insurers to provide detailed information to the Financial Conduct Authority (FCA) on claims costs, premium prices and the savings passed on to motor insurance premium customers.

As a legal representative organisation, it is neither appropriate or possible for MASS to respond to most questions in the consultation, except we have a view on Question 14.

We would, however, like to submit our general views and observations on the main principles that are being considered and the overall approach to the issue of insurer responsibility.

In summary:

- Whilst the commitment made by much of the insurance sector to pass on any savings resulting from the Civil Liability Act 2018 and related changes is welcome, we are also deeply sceptical about whether consumers will fully benefit from any resulting financial savings for the sector.

- The insurance sector has a poor history of passing cost savings to consumers from previous reforms, suggesting that any savings from the reforms will be short-lived at best. As we detail below, the insurance industry did not maintain all the promised cost savings to consumers following the LASPO reforms.

- As recognised by the regulations, it is essential that a complete picture of the claims system is understood and reported, and that it investigates beyond the media-friendly soundbites usually available to the public. For instance, claims that premiums have fallen are often based on newly issued motor insurance policies, which tend to be lower in a competitive market, rather than the higher automatic renewals which account for around 70% of the market.

- The information to be provided to the FCA is specifically focused around the implications of the Civil Liability Act, whether or not the Act had been passed. The Government's reforms go far beyond the measures set out in the Act, for instance, including a proposed increase in the Small Claims Limit and the establishment of a new Litigant-in-Person Portal, neither of which are covered by the Act.

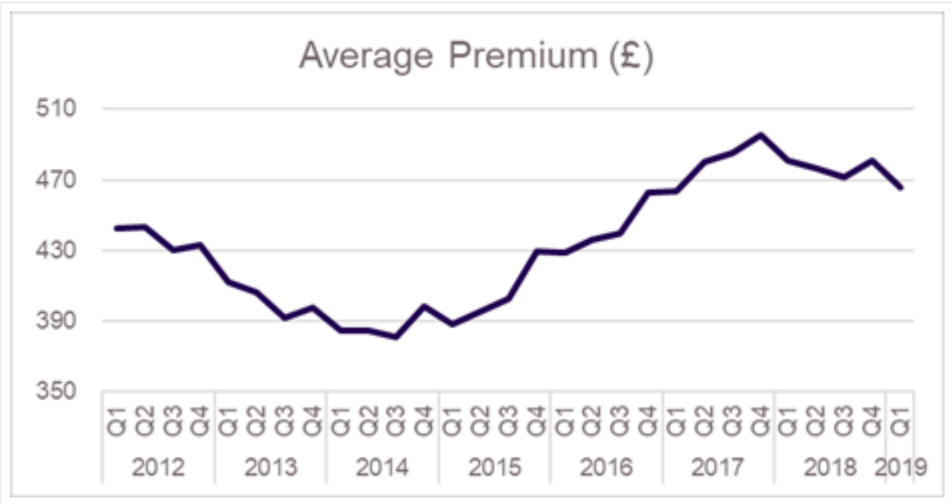
- The process and reporting of savings passed back to consumers should be implemented significantly earlier, following the first year of implementation, rather than the currently planned 2024/25.

- The consequences for insurers should be set out if they fail to pass on the savings to customers. Serious consideration should be given to how consumers can benefit from limiting unjustifiable price increases in insurance premiums, encouraging greater switching and limiting price increases on automatic premium renewals, perhaps through a relative price cap.

Sustained savings for consumers

In December 2015, the Ministry of Justice stated that whiplash claims added £90[i]. In 2017 MoJ estimated that its whiplash reform programme, including the measures introduced in the Civil Liability Act, would result in cost savings of around £1 billion per year of which insurers were expected to pass 85% to motorists in reduced motor insurance premiums. Since then, the promised savings to consumers from the reforms by cutting motor insurance premiums have fallen to £35-50, depending upon the source.

Legal costs have been falling for over ten years, having been fixed for RTA cases in 2003, reviewed (and negotiated with insurers) in 2010 and the LASPO cost reforms introduced in April 2013, reduced legal costs by 60%. Whilst claims and costs have fallen dramatically in recent years, motor insurance premiums have risen steadily since the post-LASPO period, returning to pre-LASPO reform levels, before a modest fall in the last few months.



ABI's latest Motor Insurance Premium Tracker (2012-Q1 2019)

Some recent claims that the proposed whiplash reforms have already led to premium reductions are utterly disingenuous and defy logic given that implementation will not be until April 2020 at the earliest. As the Government has said:

> "The average time for a claim to be resolved is currently 12 months. Although we expect to see savings starting from the implementation of these measures, the full estimated savings will take some time to realise."[ii]

Our conclusion is that contrary to numerous claims, the insurance industry did not permanently pass on all the cost savings to consumers following the LASPO reforms in 2012 but enjoyed a period of record profits whilst only marginally reducing premiums (much of these falls have been attributed to sector competition).

Given the insurance sector's track record, it is highly unlikely that the £40-50 reductions promised both in 2012 and again in 2015-16 will ever be passed to consumers. As RAC Insurance Director, Mark Godfrey, said when the latest reforms were announced:

> "Anything that reduces the cost of car insurance for motorists has to be welcomed, but we should be cautious around the saving figure of £40-£50 a year on average policy costs as previous estimates of savings have been over-egged and one of the reasons behind recent increases in car insurance premiums across the market. devil, of course, will be in the detail which we wait to see."[iii]

It is our continued belief that the insurance industry does not maintain promised cost savings to consumers.

Factors beyond claims costs impacting insurance premiums
MASS believes that any "savings" to the insurance sector as a result of the reforms is likely to be relatively modest given the likely additional costs to insurers of having to deal directly with many of their premium holders. Claims that further increases in motor insurance premiums are due to legal costs, which will have been dramatically reduced, or whiplash claims, with significantly reduced damages, should be treated with extreme scepticism.

There are other factors that have a significant impact on the pricing of premiums:

<u>Repair costs</u>
Whilst legal costs have been falling for over ten years, the cost of repair bills has risen by 33% since 2013. According to consultancy firm EY, rising premiums and falling injury claims saw the UK's motor insurance market record higher underwriting profits in 2017 than at any point since 1994 (The Actuary[iv], 29 June 2018). Sector profits have reached well over £3.5bn in the last 3 years.

The ABI has publicly acknowledged that even with the planned changes to the claims process, premiums will continue to increase because of other factors, such as the rising costs of repair bills or future increases in the Insurance Premium Tax (IPT). There will always be an excuse for increasing motor insurance premiums:

> "Civil litigation reform is not done in isolation to the wider economy and wider market….you have seen a devaluation in the pound, you have seen increased repair bills [up 32% in last three years] in the context of increasingly technologically advanced vehicles with laser systems and so on…and you have a proposal that the discount rate should be reduced….Those costs will be passed on to consumers through higher car insurance premiums….What I can say is that premiums will not go up as much if these personal injury reforms are implemented."
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> "There are a multitude of people in the broader claims environment who are not subject to a regulatory framework. Medical reporting organisations are one; garages are another, and they add significantly to repair costs. We have talked a lot about claims management companies. Insurers and solicitors are regulated entities. There is a plethora of other institutions in that orbit, as it were, that are not subject to regulation, including McKenzie friends, and it is a very important point."[v]

There is clear evidence that other costs have increased dramatically which are completely unrelated to injury claims. The ABI itself acknowledges that the cost of repairs has increased by 43% in the last three years. In the 2013 ABI report "Lifting the lid on car insurance" the ABI stated average daily payouts for all aspects of claims were £19.4m per day or £7.081bn per year. They stated that 29% of that figure (over £2bn) related to damage and replacement vehicles.

In the 2016 ABI report of the same name[vi] (published Oct 2016 and using data from 2015) the cost per day had increased to £21.2m per day i.e. £7.738bn. Of this 38% is now attributed to repairs and replacement vehicles, i.e. £2.94 bn. This equates to an increase of £887m or just over 43%. Since 2015/16 the pace of technological complexity and cost of repairing vehicles has increased dramatically.

David Stevens, Chief Executive of Admiral, has commented that there are "continuing elevated levels of inflation in property damage claims costs", referring to higher costs for car repairs. "The front and back bumpers have sensors and all sorts, which makes some makes and models two or three times more expensive to repair than previous models."[vii]

Insurance Premium Tax
Following successive increases in the Insurance Premium Tax (IPT), a doubling of the rate to 12% in 18 months (6% to 9.5% in November 2015, 9.5% to 10% in October 2016 and 10% to 12% from June 2017), it is clear that the insurance sector passes these costs straight onto the consumer and will do so again in the future if there are further IPT increases or any other related tax increases.

Cyclical trends
There are long-term and complex cyclical trends in insurance premiums. A 2016 House of Commons briefing paper[viii] set out some of the issues:

> "A feature of the insurance industry is that it is very cyclical, and companies frequently use one type of insurance as a loss leader in order to attract other types of cross selling opportunities. Thus, premium rates do tend to follow a cycle in which years of very low increases are followed by years when they catch up. Whether rates harden in a period tends to be correlated by the competitive behaviour of the market. Insurance is a product which is difficult to differentiate as between suppliers. To most drivers it is something you have to have in order to get on the road, the incidence of uninsured driving suggests that were there no legislative requirement for insurance many drivers would 'risk it'.
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> Products that are sold not on the basis of their quality, but on the basis of price are enormously sensitive to price changes and, hence, profits of the sector as a whole are highly volatile. In the face of varying profits, it is relatively cost free for financial groups to either enter the market or to contract the form of business they offer. Eventually, the market as a whole decides that it can no longer afford to charge loss making rates and the catch-up period follows."

Enforce savings
There is currently no mechanism by which the Government can force insurers to pass on the supposed savings from reduced motor insurance premiums to consumers and it is disappointing that the Civil Liability Act did not set out sanctions if this is proven.

Serious consideration should now be given to how consumers can benefit from limiting future unjustifiable price increases in insurance premiums, encouraging greater switching of premiums and limiting price increases on automatic premium renewals. The Financial Conduct Authority (FCA) should consider the potential viability of a relative price cap on future increases in insurance premiums. If consumers can benefit from a price cap in the energy sector, which is highly competitive and subject to changing wholesale prices, then it should be perfectly possible in the insurance market to benefit consumers by limiting premium increases.

2. Questions

Question 14
Do you agree that the 1 November 2023 is sufficient time to collect information and provide to FCA?

For an industry that invests heavily in advanced technology and data systems to provide real-time data to maximise efficiency and profits, it is faintly absurd that the sector is being given until 1 November 2023 to provide the necessary information. Given the implications of the Government's reforms upon accident victims, it is critical that insurers are held responsible on their promised falls in motor premiums at an earlier date.

The Government's reforms and the new Litigant-in-Person Portal are due to go live in April 2020. It should be perfectly possible for the FCA to report on motor premium data in November 2021, allowing six months to prepare the information for the first year of operation of the new claims system (April 2020-March 2021). Given that the regulations dictate that insurers "may" provide the information for "one or more full years beginning with 1 April 2018 or 1 April 2019" a shorter public reporting period would appear eminently possible.

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[i] MoJ press release, 28 December 2015, https://www.gov.uk/government/news/insurers-vow-to-pass-on-whiplash-reform-savings

[ii] Government Response to the Justice Committee's Seventh Report of Session 2017–19: Small Claims Limit for Personal Injury, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/725155/Govt_Resp_to_Justice_Committee_s_Report_on_Small_Claims_Limit_for_Personal_Injury_web_.pdf

[iii] RAC press release, 25 November 2015, http://www.rac.co.uk/press-centre#/news/autumn-statement-reaction-car-insurance-premiums-139421

[iv] http://www.theactuary.com/news/2018/06/motor-insurers-profits-hit-a-more-than-two-decade-high/

[v] James Dalton, Director of General Insurance Policy, ABI, before Justice Select Committee, 7 February 2017 http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/government-consultation-on-soft-tissue-injury-claims/oral/46873.pdf

[vi] ABI, October 2016, Lifting the Bonnet on Car Insurance https://www.abi.org.uk/~/media/Files/Documents/Publications/Public/2016/Motor/Lifting%20the%20bonnet%20on%20car%20insurance.pdf

[vii] FT report on Admiral results, 15 August 2018 https://www.ft.com/content/7ba5ea38-a054-11e8-85da-eeb7a9ce36e4

[viii] Motor Car Insurance, House of Commons Library, 1 April 2016, http://researchbriefings.files.parliament.uk/documents/SN06061/SN06061.pdf